

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Simon Blye, #301539,)	
)	
Plaintiff,)	C/A No. 2:08-3636-MBS
)	
vs.)	
)	O R D E R
South Carolina Dept. of Corr. et al;)	
Jon P. Ozmint, Director; Ms. Hardings,)	
IGC;)	
)	
Defendants.)	
_____)	

Plaintiff Simon Blye is an inmate in the custody of the South Carolina Department of Corrections (“SCDC”). On October 30, 2008, Plaintiff, appearing *pro se* and proceeding *in forma pauperis* filed a civil rights action against SCDC; Jon P. Ozmint, Director; and Ms. Hardings, Inmate Grievance Counselor, pursuant to 42 U.S.C. § 1983. Compl.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Robert S. Carr for pretrial handling. On December 9, 2008, Defendants filed a motion to dismiss Defendant SCDC on the grounds that it was entitled to summary dismissal on immunity grounds pursuant to the Eleventh Amendment of the U.S. Constitution. Notice of Mot. and Mot. to Dismiss Def. S.C. Dep’t of Corr. On December 15, 2008, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the motion to dismiss procedure and the possible consequences if he failed to respond adequately. Plaintiff filed a response in opposition to Defendants’ motion on December 22, 2008. Entry 17. On January 5, 2009, Plaintiff filed a supplemental response to Defendants’ motion. Entry 20.

On January 22, 2009, the Magistrate Judge filed a Report and Recommendation in which he

recommended that Defendants' motion be granted. Report and Recommendation. The Magistrate Judge found that the Eleventh Amendment rendered Defendant SCDC immune from the instant suit. Id. at 2-3. Plaintiff filed objections to the Report and Recommendation on January 30, 2009. Objections.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). The district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's report to which objections have been filed. Id. However, the district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. Orpiano v. Johnson, 687 F.2d 44, 47-48 (4th Cir. 1982).

Plaintiff objects to the Report and Recommendation by asking this court to allow him to "re-file a proper motion to this case at a later date" and further asks this court to allow him a "proper time frame to refile [sic] this case." Objections. Plaintiff indicates that when refileing the case, he will "add the proper South Carolina Dept. of Corrections employee who was responsible for keeping me on Kershaw C.I. Unit Lockup, and at the Broad River Unit Saluda Unit Lockup." Id. However, such objections fail to indicate to this court a specific error in the Report and Recommendation. Plaintiff never disputes that Defendant SCDC is immune from being a party in the instant suit, based

on the provisions of the Eleventh Amendment. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89 (1984).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. Defendants' motion to dismiss (Entry 12) is **granted**. The within action is recommitted to the Magistrate Judge for further pretrial handling.

IT IS SO ORDERED.

s/Margaret B. Seymour
United States District Judge

Columbia, South Carolina
May 21, 2009